

AMENDED IN ASSEMBLY SEPTEMBER 8, 2005

AMENDED IN ASSEMBLY SEPTEMBER 7, 2005

AMENDED IN ASSEMBLY AUGUST 25, 2005

AMENDED IN ASSEMBLY AUGUST 22, 2005

SENATE BILL

No. 1026

Introduced by Senator ~~Kehoe~~ Kuehl

(Principal coauthors: ~~Assembly Members Mullin and Salinas~~)

(Coauthor: Senator Alquist)

(Coauthor: ~~Assembly Member Lieber~~ Coauthors: *Assembly Members
Pavley and Levine*)

February 22, 2005

~~An act to add and repeal Section 1240.060 of the Code of Civil Procedure, relating to eminent domain. An act to add and repeal Article 6.9 (commencing with Section 20209.20) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1026, as amended, ~~Kehoe Kuehl. Eminent domain. Highway construction contracts: design-build projects.~~

Existing law makes the Department of Transportation responsible for improving and maintaining the state highway system. Under existing law, until January 1, 2010, the department is authorized to utilize design sequencing as an alternative contracting method for the design and construction of not more than 12 transportation projects.

This bill would authorize the Los Angeles County Metropolitan Transportation Authority, until January 1, 2010, in consultation with the department, to use a specified design-build procurement process

for the construction of a high-occupancy vehicle lane in the County of Los Angeles designated in the National Corridor Infrastructure Improvement Program, the federal “Safe, Accountable, Flexible, Efficient Transportation Equity Act,” if certain conditions are satisfied.

This bill would require design-build entity bidders to provide certain information in a questionnaire submitted to the authority that is verified under oath. Because a verification under oath is made under penalty of perjury, the bill would create a new crime and impose a state-mandated local program. After a contract is awarded, the bill would require the authority to report to a specified committee of the Legislature regarding implementation of the design-build process.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law authorizes public entities to seize private property under the power of eminent domain.~~

~~This bill would prohibit, until January 1, 2008, a community redevelopment agency, or any community development commission or joint powers agency that has the powers of a community redevelopment agency, from exercising, threatening, or implying the use of the power of eminent domain to acquire owner-occupied residential real property, as defined, from which the owner would be displaced if ownership of the property will be transferred to a private party or private entity.~~

~~The bill would also require the California Research Bureau of the State Library to submit two reports to the Legislature, on or before January 1, 2007, and January 1, 2008, regarding the exercise of the power of eminent domain in connection with residential property and commercial property, as specified. The bill would also direct the California Law Revision Commission to study the appraisal and valuation process in eminent domain proceedings with respect to fairness of compensation and the role of legal counsel for the condemnee, and to report to the Legislature on this study on or before January 1, 2008.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 6.9 (commencing with Section 20209.20)
2 is added to Chapter 1 of Part 3 of Division 2 of the Public
3 Contract Code, to read:

4
5 Article 6.9. Transportation Design-Build Contracts
6

7 20209.20. The Legislature finds and declares all of the
8 following:

9 This project is subject to the existing process under the state
10 transportation improvement program (Chapter 2 (commencing
11 with Section 14520) of Part 5.3 of Division 3 of the Government
12 Code) or the traffic congestion relief program (Chapter 4.5
13 (commencing with Section 14556) of Part 5.3 of Division 3 of the
14 Government Code), as applicable, for planning, programming,
15 environmental clearance, and funding. The project must comply
16 with all existing requirements under the state transportation
17 improvement program or the traffic congestion relief program,
18 as applicable, for project development and funding. This article
19 shall not confer any type of competitive advantage upon the
20 project in this article, relative to other projects subject to the
21 state transportation improvement program, during other phases
22 of project development.

23 20209.22. For the purposes of this article, the following
24 definitions apply:

25 (a) "Authority" means the Los Angeles County Metropolitan
26 Transportation Authority.

27 (b) "Department" means the Department of Transportation.

28 (c) "Design-build" means a procurement process in which
29 both the design and construction of a project are procured from
30 a single entity.

31 (d) "Design-build entity" means a partnership, corporation,
32 or other legal entity that is able to provide appropriately licensed
33 contracting, architectural, and engineering services as needed
34 pursuant to a design-build contract.

1 (e) “Project” means the construction of a high-occupancy
2 vehicle lane in the County of Los Angeles designated in the
3 National Corridor Infrastructure Improvement Program as
4 established in Section 1302 of HR 3, the federal “Safe,
5 Accountable, Flexible, Efficient Transportation Equity Act: A
6 legacy for users,” signed into law by the President on August 10,
7 2005.

8 20209.23. The authority may utilize the design-build
9 procurement method for the construction of a high occupancy
10 vehicle lane in the County of Los Angeles designated in the
11 National Corridor Infrastructure Improvement Program as
12 established in Section 1302 of HR 3, the federal “Safe,
13 Accountable, Flexible, Efficient Transportation Equity Act: A
14 legacy for users,” signed into law by the President on August 10,
15 2005.

16 20209.24. The authority shall implement a labor compliance
17 program as described in Section 1771.5 of the Labor Code, or it
18 shall contract with a third party to implement on the authority’s
19 behalf a labor compliance program subject to that statute. This
20 requirement does not apply to any project where the authority or
21 the design-build entity has entered into any collective bargaining
22 agreement or agreements that bind all of the contractors
23 performing work on the projects.

24 20209.26. Bidding for the project shall progress as follows:

25 (a) (1) The authority, with the approval of the department,
26 shall prepare or cause to be prepared, a set of documents setting
27 forth the scope of the project, as set forth in this subdivision.

28 (2) The department shall prepare documents that may include,
29 but need not be limited to, the size, type, and desired design
30 character of the project, performance specifications covering the
31 quality of materials, equipment, and workmanship, preliminary
32 plans, and any other information deemed necessary to describe
33 adequately the authority’s needs. The performance specifications
34 and any plans, preliminary engineering, environmental
35 documents, prebid services, and project reports shall be
36 performed by employees of the department. The preliminary
37 engineering and project reports shall be performed by
38 professional engineers employed by the department.

39 (b) Based on the documents prepared under subdivision (a),
40 the authority shall prepare a request for qualifications that

1 *invites interested parties to submit qualifications in the manner*
2 *prescribed by the authority. The request for qualifications shall*
3 *include, but need not be limited to, the following elements:*

4 *(1) Identification of the basic scope and needs of the project or*
5 *contract, the expected cost range, the methodology that will be*
6 *used by the authority to evaluate qualifications, the process for*
7 *selecting from among prequalified parties the lowest responsible*
8 *bidder, and any other information deemed necessary by the*
9 *authority to inform interested parties of the contracting*
10 *opportunity.*

11 *(2) Significant factors that the authority shall consider in*
12 *evaluating qualifications, including cost or price lifecycle costs*
13 *over 15 years or more, technical design and construction*
14 *expertise, skilled labor force availability, and all other nonprice*
15 *related factors. As used in this paragraph, “skilled labor force*
16 *availability” shall be determined by the existence of an*
17 *agreement with a registered apprenticeship program, approved*
18 *by the California Apprenticeship Council, that has graduated at*
19 *least one apprentice in each of the preceding five years. This*
20 *graduation requirement shall not apply to programs providing*
21 *apprenticeship training for any craft that was first deemed by the*
22 *Department of Labor and the Department of Industrial Relations*
23 *to be an apprenticeable craft within the five years prior to the*
24 *effective date of this article.*

25 *(3) The relative importance of the weight assigned to each of*
26 *the factors identified in the request for qualifications.*

27 *(4) If the authority reserves the right to hold discussions with*
28 *prequalified bidders, it shall so specify in the request for*
29 *qualifications and shall publish separately or incorporate into*
30 *the request for qualifications applicable rules and procedures to*
31 *be observed by the authority to ensure that any discussions or*
32 *negotiations are conducted in good faith.*

33 *(c) (1) In establishing the procedure to prequalify*
34 *design-build entities, the authority shall use a standard*
35 *questionnaire prepared by the authority. In preparing the*
36 *questionnaire, the authority shall consult with the construction*
37 *industry, including, but not limited to, representatives of the*
38 *building trades and surety industry. This questionnaire shall*
39 *require information including, but not limited to, all of the*
40 *following:*

1 (A) If the design-build entity is a partnership, limited
2 partnership, or other association, a listing of all of the partners,
3 general partners, or association members known at the time of
4 bid submission who will participate in the design-build contract.

5 (B) (i) Evidence that the lead member of the design-build
6 entity has completed a state highway project in California with a
7 value of at least twenty-five million dollars (\$25,000,000) in the
8 past 10 years.

9 (ii) Evidence that the members of the design-build entity have
10 completed, or demonstrated the experience, competency,
11 capability, and capacity to complete projects of similar size,
12 scope, or complexity, and that proposed key personnel have
13 sufficient experience and training to competently manage and
14 complete the design and construction of the project, as well as a
15 financial statement that assures the authority that the
16 design-build entity has the capacity to complete the project.

17 (C) The licenses, registration, and credentials required to
18 design and construct the project, including, but not limited to,
19 information on the revocation or suspension of any license,
20 credential, or registration.

21 (D) Evidence that establishes that the design-build entity has
22 the capacity to obtain all required payment and performance
23 bonding, liability insurance, and errors and omissions insurance.

24 (E) Information concerning workers' compensation
25 experience history and a worker safety program.

26 (F) A full disclosure regarding all of the following that are
27 applicable:

28 (i) Any serious or willful violation of Part 1 (commencing with
29 Section 6300) of Division 5 of the Labor Code or the federal
30 Occupational Safety and Health Act of 1970 (Public Law
31 91-596), settled against any member of the design-build entity.

32 (ii) Any debarment, disqualification, or removal from a
33 federal, state, or local government public works project.

34 (iii) Any instance where the design-build entity, or its owners,
35 officers, or managing employees submitted a bid on a public
36 works project and were found to be nonresponsive, or were found
37 by an awarding body not to be a responsible bidder.

38 (iv) Any instance where the design-build entity, or its owners,
39 officers, or managing employees defaulted on a construction
40 contract.

1 (v) Any violations of the Contractors' State License Law, as
2 described in Chapter 9 (commencing with Section 7000) of
3 Division 3 of the Business and Professions Code, excluding
4 alleged violations of federal or state law regarding the payment
5 of wages, benefits, apprenticeship requirements, or personal
6 income tax withholding, or Federal Insurance Contribution Act
7 (FICA) withholding requirements settled against any member of
8 the design-build entity.

9 (vi) Any bankruptcy or receivership of any member of the
10 design-build entity, including, but not limited to, information
11 concerning any work completed by a surety.

12 (vii) Any settled adverse claims, disputes, or lawsuits between
13 the owner of a public works project and any member of the
14 design-build entity during the five years preceding submission of
15 a bid under this article, in which the claim, settlement, or
16 judgment exceeds fifty thousand dollars (\$50,000). Information
17 shall also be provided concerning any work completed by a
18 surety during this period.

19 (G) In the case of a partnership or any association that is not
20 a legal entity, a copy of the agreement creating the partnership
21 or association and specifying that all partners or association
22 members agree to be fully liable for the performance under the
23 design-build contract.

24 (H) Information regarding the safety record of the
25 design-build entity. A bidder's safety record shall be deemed
26 acceptable if its experience modification rate for the most recent
27 three-year period is an average of 1.00 or less, and its average
28 total recordable injury/illness rate and average lost work rate for
29 the most recent three-year period does not exceed the applicable
30 statistical standards for its business category or if the bidder is a
31 party to an alternative dispute resolution system as provided for
32 in Section 3201.5 of the Labor Code.

33 (2) The information required under this subdivision shall be
34 verified under oath by the entity and its members in the manner
35 in which civil pleadings in civil actions are verified. Information
36 required under this subdivision that is not a public record under
37 the California Public Records Act, as described in Chapter 3.5
38 (commencing with Section 6250) of Division 7 of Title 1 of the
39 Government Code, shall not be open to public inspection.

1 (d) The authority shall establish a procedure for final
2 selection of the design-build entity in which selection shall be
3 based upon a competitive bidding process resulting in lump-sum
4 bids by the prequalified design-build entities. Awards shall be
5 made to the lowest responsible bidder.

6 (e) (1) Notwithstanding any other provision of this code, upon
7 issuance of a contract award, the authority shall publicly
8 announce the award, identifying the contractor to whom the
9 award is made, along with a written decision supporting the
10 contract award and stating the basis of the award. The notice of
11 award shall also include all prequalified design-build entities.

12 (2) The written decision supporting the authority's contract
13 award, described in paragraph (1), and the contract file shall
14 provide sufficient information to satisfy an external audit.

15 20209.27. For purposes of this article, prebid services
16 include preliminary engineering studies and other activities that
17 lead to the selection of a project alternative. These activities
18 encompass a variety of tasks, including, but not limited to, the
19 following activities:

20 (a) Project geometric design.

21 (b) Earthwork calculations.

22 (c) Preparation of cross sections.

23 (d) Drainage design.

24 (e) Construction staging design.

25 20209.28. (a) Any design-build entity that is selected to
26 design and build the project under this article shall possess or
27 obtain sufficient bonding to cover the contract amount for
28 nondesign services, and errors and omission insurance coverage
29 sufficient to cover all design, engineering, and architectural
30 services provided in the contract. This section does not prohibit a
31 general or engineering contractor from being designated the
32 lead entity on a design-build project for the purposes of
33 purchasing necessary bonding to cover the activities of the
34 design-build entity.

35 (b) Any payment or performance bond written for the purposes
36 of this article shall be written using a bond form developed by
37 the Department of General Services under subdivision (i) of
38 Section 14661 of the Government Code.

39 20209.30. All bids by subcontractors that were not listed by
40 the design-build entity in accordance with subparagraph (A) of

1 *paragraph (1) of subdivision (c) of Section 20209.26 shall be*
2 *considered by the design-build entity in accordance with the*
3 *design-build process set forth by the authority in the design-build*
4 *package. All bids by subcontractors bidding on contracts under*
5 *this article shall be subject to Chapter 4 (commencing with*
6 *Section 4100) of Part 1 of Division 2. The design-build entity*
7 *shall do both of the following:*

8 *(a) Provide public notice of the availability of work to be*
9 *subcontracted in accordance with the publication requirements*
10 *applicable to the competitive bidding process of the authority.*

11 *(b) Provide a fixed date and time on which the subcontracted*
12 *work will be awarded in accordance with the procedure*
13 *established under this article.*

14 *20209.32. (a) A deviation from the performance criteria and*
15 *standards established under subdivision (a) of Section 20209.26*
16 *may not be authorized except by written consent of the authority*
17 *and the department.*

18 *(b) The employees of the department shall perform the*
19 *construction inspection for the project constructed under this*
20 *article, including surveying and testing the materials for the*
21 *project. All design related documents shall be public records.*

22 *20209.34. Quality control inspection for the construction of*
23 *the project utilizing the design-build approach authorized by this*
24 *article shall be performed by employees of the department.*

25 *20209.36. Nothing in this article affects, expands, alters, or*
26 *limits any rights or remedies otherwise available at law.*

27 *20209.38. (a) The retention proceeds withheld by the*
28 *authority from a design-build entity shall not exceed 5 percent.*

29 *(b) The authority shall not withhold retention from payments*
30 *to a design-build entity for actual costs incurred and billed or*
31 *design services, construction management services, or where*
32 *applicable, for completed operations and maintenance services.*

33 *(c) In a contract between a design-build entity and a*
34 *subcontractor, and in a contract between a subcontractor and*
35 *any subcontractor thereunder, the percentage of the retention*
36 *proceeds withheld may not exceed the percentage specified in the*
37 *contract between the authority and the design-build entity. If the*
38 *design-build entity provides written notice to any subcontractor*
39 *who is not a member of the design-build entity, prior to or at the*
40 *time that the bid is requested, that a bond may be required and*

1 the subcontractor subsequently is unable or refuses to furnish a
2 bond to the design-build entity, then the design-build entity may
3 withhold retention proceeds in excess of the percentage specified
4 in the contract between the authority and the design-build entity
5 from any payment made by the design-build entity to the
6 subcontractor.

7 (d) In accordance with the provisions of applicable state law,
8 the design-build entity may be permitted to substitute securities
9 in lieu of the withholding from progress payments specified in
10 subdivision (b). Substitutions shall be made in accordance with
11 Section 22300.

12 20209.40. Not later than three years after a design-build
13 contract is awarded, the authority shall submit a progress report
14 to the Senate Committee on Transportation and Housing and the
15 Assembly Committee on Transportation. The progress report
16 shall include, but shall not be limited to, all of the following
17 information:

18 (a) A description of the project.

19 (b) The estimated and actual project costs.

20 (c) The design-build entity that was awarded the project.

21 (d) A description of any written protests concerning any
22 aspect of the solicitation, bid, proposal, or award of the
23 design-build project, including, but not limited to, the resolution
24 of the protests.

25 (e) An assessment of the prequalification process and criteria
26 and a copy of the prequalification questionnaire.

27 (f) An assessment of the impact of limiting retention to 5
28 percent on the project, as required under Section 20209.38.

29 (g) A description of the labor force compliance program
30 required under Section 20209.24, and an assessment of the
31 impact on the project where compliance with that program is
32 required.

33 (h) A description of the method used to award the contract.

34 (i) An assessment of the project impact of the “skilled labor
35 force availability” requirement imposed under paragraph (2) of
36 subdivision (b) of Section 20209.26.

37 (j) Recommendations regarding the most appropriate uses for
38 the design-build approach.

39 20209.44. This article shall remain in effect only until
40 January 1, 2010, and as of that date is repealed, unless a later

1 *enacted statute, that is enacted before January 1, 2010, deletes*
2 *or extends that date.*

3 *SEC. 2. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the*
8 *penalty for a crime or infraction, within the meaning of Section*
9 *17556 of the Government Code, or changes the definition of a*
10 *crime within the meaning of Section 6 of Article XII B of the*
11 *California Constitution.*

12 *SEC. 3. The provisions of this act are severable. If any*
13 *provision of this act or application of the provisions of this act is*
14 *held invalid, that invalidity shall not affect other provisions or*
15 *applications that can be given effect without the invalid provision*
16 *or application.*

17 ~~SECTION 1. Section 1240.060 is added to the Code of Civil~~
18 ~~Procedure, to read:~~

19 ~~1240.060. (a) Notwithstanding any other provision of law, no~~
20 ~~community redevelopment agency, or any community~~
21 ~~development commission or joint powers agency that has the~~
22 ~~powers of a community redevelopment agency, shall exercise,~~
23 ~~threaten, or imply the use of the power of eminent domain to~~
24 ~~acquire owner-occupied residential real property from which the~~
25 ~~owner would be displaced if ownership of the property will be~~
26 ~~transferred to a private party or private entity.~~

27 ~~(b) As used in this section, "owner-occupied residential real~~
28 ~~property" means a single-family residence or a unit within a~~
29 ~~common interest development that is occupied by the owner or~~
30 ~~owners of record during the effective dates of this section, or a~~
31 ~~duplex where at least one-half of the duplex is occupied by the~~
32 ~~owner or owners of record during the effective dates of this~~
33 ~~section.~~

34 ~~(c) The requirements of this section shall apply to both new~~
35 ~~and pending eminent domain projects, except that it shall not~~
36 ~~apply to projects if a resolution of necessity was adopted~~
37 ~~pursuant to the requirements of Section 1240.040 prior to the~~
38 ~~effective date of this section.~~

~~(d) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later statute which is enacted before January 1, 2008, deletes or extends that date.~~

~~SEC. 2. (a) On or before January 1, 2007, the California Research Bureau of the State Library shall submit to the Legislature a report that includes, but not limited to, all of the following:~~

~~(1) All exercises of the power of eminent domain by public entities to acquire residential property for private use completed between January 1, 1998, and January 1, 2003, or later if the information is available. This information shall be separable according to whether residential property is owner-occupied or not owner-occupied.~~

~~(2) The declared purposes for each of those acquisitions.~~

~~(3) The initial offer of just compensation for each of those acquisitions.~~

~~(4) The final offer of just compensation for each of those acquisitions.~~

~~(5) The total compensation paid for each of those acquisitions, including the acquisition price and relocation payments.~~

~~(6) The current owners of those real properties.~~

~~(7) The current uses of those real properties.~~

~~(b) As used in this section, "private use" means any use other than as a public facility or a public works that is owned and operated by the public entity.~~

~~SEC. 3. (a) On or before January 1, 2008, the California Research Bureau of the State Library shall submit to the Legislature a report that includes, but is not limited to, all of the following:~~

~~(1) All exercises of the power of eminent domain by public entities to acquire commercial property for private use completed between January 1, 1998, and January 1, 2003, or later if the information is available.~~

~~(2) The declared purpose for each of those acquisitions.~~

~~(3) The initial offer of just compensation for each of those acquisitions.~~

~~(4) The final offer of just compensation for each of those acquisitions.~~

1 ~~(5) The total compensation paid for each of those acquisitions,~~
2 ~~including the acquisition price, relocation payments, good will,~~
3 ~~and equipment replacement.~~

4 ~~(6) The current owners of those real properties.~~

5 ~~(7) The current uses of those real properties.~~

6 ~~(b) As used in this section, “private use” means any use other~~
7 ~~than as a public facility or a public works that is owned and~~
8 ~~operated by the public entity.~~

9 ~~SEC. 4. The California Law Revision Commission is directed~~
10 ~~to study whether the law governing the appraisal and valuation~~
11 ~~processes in eminent domain proceedings fairly compensates~~
12 ~~condemnees for the taking of their properties, including the role~~
13 ~~and importance of legal counsel for the condemnee. The~~
14 ~~commission is directed to submit a report on this study, including~~
15 ~~any recommendations for changes in the law, to the Legislature~~
16 ~~on or before January 1, 2008.~~